



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-794]

Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers

Sanction for Breaches of Administrative Protective Order

AGENCY: U.S. International Trade Commission.

ACTION: Sanction for breaches of Commission administrative protective order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has imposed a sanction for the breach of the administrative protective order (“APO”) issued in this investigation. The Commission determined that the law firm of Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn Emanuel”) breached the APO by failing to adequately control access to confidential business information (“CBI”) in the investigation and litigation in the U.S. District for the Northern District of California. As a result, Quinn Emanuel attorneys and employees of complainants Samsung Telecommunications America LLC and Samsung Electronics Co., Ltd. (collectively, “Samsung”) improperly disclosed CBI to more than 140 unauthorized persons over a fourteen-month period. Quinn Emanuel is being publicly reprimanded for pervasive problems at the firm in safeguarding CBI.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436, telephone (202) 205-3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal at (202) 205-1810. General information concerning the Commission can also be obtained by accessing its Internet

server (<https://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: Several Quinn Emanuel attorneys inadvertently disclosed CBI designated by respondent Apple Inc. as CBI in the investigation and for cross-use in litigation in the U.S. District for the Northern District of California to persons who were not authorized to access CBI under the APO.

A junior associate at Quinn Emanuel failed to fully redact CBI from an expert report prepared for the district court action, and a partner at Quinn Emanuel failed to supervise the junior associate. Quinn Emanuel attorneys subsequently sent the incompletely redacted expert report to unauthorized persons at Samsung and other law and consulting firms on several occasions. Some of the non-signatory recipients further disseminated the CBI to other non-signatories, including an Italian court. One of the incidents involved a partner at Quinn Emanuel emailing more than 90 Samsung employees with instructions on how to access the incompletely redacted expert report on an FTP site. Another incident involved a second associate who failed to safeguard CBI by improperly confirming the redactions. In another incident, the same junior associate who made the original redactions discovered that an incompletely redacted report had been inadvertently disclosed to a Samsung employee and alerted the second associate and a supervising partner. Although the Samsung employee deleted the report without viewing the CBI, the second associate later sent a revised version that still contained CBI. No one at Quinn Emanuel notified Apple or the Commission of the disclosure at the time. No other efforts were made to investigate whether other disclosures had been made so as to prevent further disclosures. As a result, the unauthorized disclosures continued.

In connection with the investigation before the Commission, a mid-level associate at Quinn Emanuel failed to redact the same CBI from an outline for a brief on remedy and the public interest. Quinn Emanuel attorneys subsequently sent versions of the outline and the public interest brief containing CBI to unauthorized persons at Samsung and other law firms on several occasions. A partner at Quinn Emanuel discovered one such disclosure, but did not notify Apple or the Commission at the time because he had acted promptly after the discovery to prevent unauthorized persons from viewing CBI.

A third party filed a motion for a protective order in the district court action, alleging that Samsung had obtained CBI. Quinn Emanuel notified the Commission of certain of the disclosures a month later, and two weeks after it had notified the third party of the same disclosures.

The Commission considered several aggravating factors, including the viewing of CBI by unauthorized persons; the discovery of the breaches by a third party; Quinn Emanuel's failure and delay in reporting to the Commission the disclosures when they were discovered; the lengthy period of time in which CBI was unprotected; multiple breaches by Quinn Emanuel attorneys in the same investigation; and multiple breaches by Quinn Emanuel attorneys in a two-year period. The Commission also considered several mitigating factors, including the inadvertent nature of the breaches; Quinn Emanuel's recent implementation of a firm-wide policy to help prevent unauthorized disclosures; Quinn Emanuel's prompt and strenuous efforts to investigate, cure, and prevent further breaches; and the fact that a federal district court has already sanctioned the disclosures and conduct underlying the breaches relating to the expert report.

Although Quinn Emanuel had procedures to prevent unauthorized disclosures, the firm did not ensure that attorneys complied with those procedures and made unilateral decisions regarding the APO's scope and requirements. The large number and the vast extent of the unauthorized disclosures show that the failure to safeguard CBI was a pervasive problem at Quinn Emanuel. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Issued: August 25, 2016

Lisa R. Barton
Secretary to the Commission

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